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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees

WT Docket No. 97-82/

AirGate Wireless Comments on Further Notice of Proposed Rulemaking

AIRGATE WIRELESS, L.L.C.

J. Jeffrey Craven
Janet Fitzpatrick Moran
PATTON BOGGS LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-6000
It's Attorney's

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Summary

AirGate supports the adoption of rules for Auction 35 that incorporate the lessons learned from the C block auction. The Commission should recognize that history of the C block auction is not just about the fate of the winners but also about the participants who were willing to participate at rational economic levels and left the auction, those that have honored their obligations to pay for their licenses and those that are willing to participate in Auction 35.

AirGate supports the following proposed rules for Auction 35:

- Division of the C block spectrum into 3-10 MHz blocks tiered into markets of 2.5 million or less;
- Closed bidding on at least 1-10 MHz license in the C block spectrum in Tier 1 markets and 2-10 MHz blocks in Tier 2 markets;
- Closed bidding on all F block licenses which represent only 25% of the licenses to be auctioned;
- Elimination of bidding credits in closed bidding and increased bidding credits in open auctions;
- Inclusion in Auction 35 of all C and F block licenses in bankruptcy;
- Elimination of the holding period once a licensee's PCS system meets the build-out requirements;
- Elimination of the license cap of 98 licenses; and
- Continued adherence to the spectrum cap.

AirGate opposes open bidding on all C block spectrum and the F block spectrum. Open bidding will effectively eliminate small business participation and economic opportunity even with bidding credits.

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AirGate Wireless Comments on Further Notice of Proposed Rulemaking

AirGate Wireless, L.L.C. ("AirGate"), by its undersigned counsel, hereby submits these comments on the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding ("Further Notice").¹ As a veteran participant in the Commission's C and F block auctions and a small business, AirGate encourages the Commission to continue to implement its mandate to provide opportunities for small businesses and to disseminate wireless licenses among a wide range of applicants including small businesses. AirGate endorses the Commission's proposal to divide the C block PCS spectrum into three licenses with closed bidding on certain C block licenses and on all F block licenses as a reasoned means of balancing the Commission's statutory obligations. Closed bidding on at least one C block license and all F block licenses is essential for the Commission to fulfill its obligation to promote economic opportunity for small businesses and competition and to widely disseminate licenses.

AirGate supports the adoption of rules for Auction 35 that incorporate the lessons learned from the C block auction. The Commission should recognize that history of the C block auction is not just about the fate of the winners but also about the participants who were willing to participate at rational economic levels and left the auction, those that

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AirGate opposes open bidding on all C block spectrum and the F block spectrum.

Open bidding will effectively eliminate small business participation and economic opportunity even with bidding credits.

I. Statement of Interest

AirGate participated in the F block auction as a very small business and acquired licenses for markets in North and South Carolina. AirGate's affiliate, AirLink II, participated in the original C block auction and placed a \$20 Million upfront payment to participate in that auction. AirLink II withdrew from the C block auction in Round 42 based on its firm belief that in many markets the bid prices were unreasonably high and

¹ Further Notice of Proposed Rulemaking, WT Docket No. 97-82, FCC 00-197 (rel. June 7, 2000).

that the FCC would strictly enforce its payment rules. AirGate was an active participant in the Commission's proceedings to restructure the C block license payments.

II. History of the C Block Auction – What Has Changed – What Remains the Same

While much has happened since the initial C block auction – much has remained the same. The following things have not changed and support closed bidding for a certain C block and all of the F block licenses:

- Section 309(j) of the Communications Act still requires that the Commission design a competitive bidding system that: (1) promotes economic opportunity and competition; and (2) disseminates licenses among a wide variety of applicants including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Strict statutory construction requires that the Commission implement this mandate in its rules for Auction 35.
- The differences in access to capital between large and small businesses remain. Indeed, the scrutiny that small businesses face in raising capital has increased because of the errant bidding and financial performance of C block licensees.
- The future of PCS remains strong and promising. With the success of PCS has come a vision of the wireless future – new technologies, new opportunities and continued competition. PCS remains the most commercially attractive new wireless service since the introduction of spectrum auctions. Small businesses should have a realistic opportunity to participate in this service.

The following things have changed:

- Small businesses have struggled with the outcome of the C block auction.
- Many small businesses exercised sound business judgment in the C block auction but are now are tainted with the C block black eye:
 - Over 50% of the initial bidders in the C block auction withdrew from the auction because they did not believe the bidding would support a rational business plan.
 - Over 50% of the top 10 bidders measured by upfront payments in the initial C block auction withdrew from the auction.
- Small businesses continue to grow as a force in the U.S. economy that provides economic opportunity for a vast number of Americans.

- Wireless services continue to be a strong source of growth in the telecommunications sector.
- Wireless providers are consolidating into large nationwide companies.
- Spectrum auctions continue to provide the best opportunity for small businesses to become PCS providers.

III. Closed Bidding on Some C Block Spectrum Is Appropriate

AirGate supports the Commission disaggregation of the C block spectrum into 3-10 MHz blocks provided at least 1-10 MHz license in Tier 1 markets and 2-10 MHz licenses in Tier 2 markets are closed for bidding based on entrepreneurial eligibility. Ten megahertz license blocks are adequate for urban and rural deployment of PCS systems. Today, PCS carriers in large cities such as Atlanta operate networks on only 10 MHz of spectrum. This success demonstrates that 10 MHz is a viable amount of spectrum for PCS networks. The three disaggregated blocks of 10 MHz of C block spectrum also provide a realistic opportunity for carriers to aggregate spectrum into larger spectrum blocks.

Closed bidding on at least 1-10 MHz C block license in Tier 1 markets and 2 –10 MHz licenses in Tier 2 markets is critical. In the initial allocation of PCS spectrum, the Commission allocated 1/3 of the spectrum (40 MHz) for closed bidding by entrepreneurial companies below a certain revenue and asset size. Under the Commission's proposal in the Further Notice this would be cut by 50% in Tier 1 Markets to 1/6 with 20 MHz (1-10 MHz C block and 1-10 MHz F block license) for closed bidding by designated entities. If the F block license is subject to open bidding another 50% reduction will occur bringing the total spectrum for which small businesses have a realistic opportunity to acquire to 1/12. Under these scenarios from 83% to 91% of the PCS spectrum would be available for carriers of any size.

Small businesses cannot realistically compete with the capital resources of large companies in the auction. This is true particularly since installment payments for license payments have been eliminated and small businesses will need to have sufficient capital to pay for their licenses in full after the auction closes. In addition, burned by the C block auction, investors in the capital markets have advised AirGate that they will be extremely cautious in investing in a small businesses without certainty in the auction rules, a clear opportunity for small businesses and a stellar business plan.

The Commission does not face a risk of repeating the history of witnessing a slew of bidders default as it witnessed after the C block auction. The Commission's decision to eliminate installment payments, more than any other rule change, will avoid financial defaults. In this auction, a high bidder will have to pay for the license before it gets the license. In essence, payment in full is required before a licensee gets clean title to the license.

The eagerness with which large carriers have sought waivers of the eligibility requirement and rule changes demonstrate the demand for additional PCS spectrum. Many large carriers have publicly stated that they have billions of dollars in resources to allocate to acquiring spectrum in the auction. The increasing consolidation in the wireless industry in recent months also indicates a trend toward larger carriers with nationwide offerings rather than regional or local carriers with more directed services – a niche historically served by entrepreneurs and small businesses.

Disaggregation of the spectrum with closed bidding on a portion of the spectrum adequately balances the interest of large carriers and the statutory requirements for a wide dissemination of licenses and an auction design that promotes economic opportunity for small businesses.

IV. Tiered Markets will Promote Future Wireless Growth

AirGate supports the division of C block licenses into two categories tiered based on a dividing market population of 2.5 million. This threshold draws a reasonable line between large markets such as New York, Atlanta and San Francisco with smaller growth markets such as Baltimore, Denver and Sacramento. The Tier 2 markets provide more opportunities to cover metropolitan areas on a smaller scale and with possibly less capital and operating costs.

Investors in small business bidders also will be looking for small businesses to serve population centers to gain the size they need to finance their ongoing network operations. Today, wireless businesses are evaluated predominately on a “per Pop” basis with more value being attributed to more “Pops” and a minimum number of Pops being used to provide the scale that can be financed in the capital markets. Market size will matter for small business bidders to make their business plans work and demonstrate a path to subscriber growth and profitability.

V. The F Block Should Be Auctioned By Closed Bidding

AirGate, as a winner of F block licenses and current licensee, strongly encourages the Commission to continue to apply closed bidding to the F block licenses. The differences between the history of the C and F block licensees do not support open bidding for the F block licenses. Indeed, the Commission recognized in the Further Notice that it has not faced the same type of problems and difficulties with the F block as with the C block.² The improved performance does not logically lead to elimination of the closed bidding but rather points to the improved auction structure with an increased down payment and less favorable installment payment financing.

The fact that a C block license has been awarded in most of the markets in which F block licenses will be auctioned only tells part of the story. Most of these C block licensees are in bankruptcy and their licenses are unlikely to remain in the hands of entrepreneurs. In addition, in many markets, the F block license is the only license (1/12th of the PCS spectrum) available. In the Commission's list of licenses to be auctioned only 25% of the licenses are F block licenses. This percentage will be reduced if the Commission disaggregates the C block spectrum. Auction 35 may be the last opportunity for entrepreneurs to acquire PCS licenses. If the F block licenses are not sold in Auction 35, AirGate supports elimination of the eligibility restrictions in their entirety in a subsequent auction.

VI. Bidding Discounts Can Be Eliminated in Closed Auctions but Should Be Increased and Applied in Open Bidding

AirGate recommends the elimination of bidding discounts for those licenses subject to closed bidding. Among those eligible to bid for licenses in closed bidding, the bidding discounts become largely irrelevant as bidders bid through those discounts. In open bidding, where the difference in access to and the cost of capital for large and small businesses is magnified, the bidding discounts have value. Accordingly, AirGate encourages the Commission to retain and increase the bidding discounts in open bidding from 15% to 25% for very small businesses and from 25% to 40% for small businesses. These increased bidding discounts have value but should not be viewed as an alternative to closed bidding.

²

Further Notice at P 31.

VII. Grandfathering Prior C-Block Auction Participants

AirGate urges the Commission to extend the “grandfathering” provision to all C- and F-Block auction participants and licensees. AirGate acknowledges that the Commission initially adopted the grandfathering rule as part of a package of ‘extraordinary relief’ granted only to original C-Block auction participants. Maintaining this standard, however, creates untenable disparities among designated entities.

Under the current rules, companies that participated in F-Block auctions or hold F block licenses may be barred from participating because they have achieved growth through business expansion or because they have attracted capital investment. However, companies that participated in the original C-Block auction may participate, regardless of growth. The unintended consequence of the current rule is to penalize successful F-Block licensees. Such a result is arbitrary and capricious, since eligibility is determined solely by the auction in which an applicant participated.

The current grandfather rule will also reduce the total number of eligible licensees that can participate for entrepreneurs’ block licenses, in direct contradiction of the Commission’s mandate to “promote economic opportunity to a wide variety of applicants, including small businesses.” (47 U.S.C. 309(j)(4)(C)). Moreover, the rule may eliminate those licensees most interested in acquiring additional entrepreneur’s block licenses: successful F-Block licensees. The upcoming auction represents their last opportunity to acquire PCS spectrum to expand their “footprints.” Moreover, these are exactly the entities that are most likely to make the best use of the remaining PCS spectrum, because they have a past record of success in the business, and may achieve economies of scale by expanding their footprints.

The Commission has already proposed to reduce the number of licenses set aside for designated entities. It should not also arbitrarily restrict eligibility for F-Block, but not C-Block, licensees. The remedy is to grandfather all existing C- and F-block licensees for the upcoming auction.

VIII. All Licenses in Bankruptcy Should Be Included in the Auction

AirGate encourages the Commission to include in this auction all PCS licenses in bankruptcy, not just those included in the initial notice for Auction 35. With the delay in the auction commencement date from July until November, the Commission may be able to include in this auction licenses also pending in bankruptcy proceedings. This would provide bidders with additional opportunities to acquire spectrum and to analyze the strategic value of these licenses as a complement to those already up for bid and held by carriers bidding in the auction.

IX. Holding Periods Should be Tied to Build-Out Milestones

AirGate endorses the Commission's proposal to tie the license holding period for C and F block licenses won in closed bidding to meeting the build out requirements system wide. This proposal aligns the interest of accelerating build outs and the introduction of service to the public with a licensee's ability to access capital and strategically grow its business. AirGate supports evaluation of satisfaction of the build out requirements on a system wide basis rather than a market-by-market basis.

X. The License Cap Should be Eliminated but the Spectrum Cap Maintained

AirGate agrees with the Commission that the license cap is outdated and should be eliminated. The spectrum cap, however, continues to serve the valid statutory goal of ensuring a wide dissemination of licenses and preventing excessive consolidation of

licenses with a single carrier. Without this limit, a single carrier with a 30 MHz license would be able to amass the entire spectrum in the auction and conceivably eliminate three additional sources of competition in the case of C block licenses. The wireless market today provides the clearest example of the consumer benefits of competition. PCS carriers have provided competition that has reduced prices and increased the diversity of pricing plans for wireless users. These competitive rewards are the direct result of PCS carriers' competitive attack on the cellular oligopoly. If the Commission removes the spectrum cap these rewards may be eroded.


Furthermore, as the Commission notes in the Further Notice if a particular carrier's circumstances warrant, the Commission can grant a waiver of the spectrum cap on a case-specific basis. The appropriate forum to address all the issues associated with the spectrum cap is in the 2000 Biennial review as suggested by the Commission in the Further Notice.

XI. Conclusion

As a small business that has participated in the entrepreneurial block auctions, AirGate encourages the Commission not to turn a deaf ear to the statutory requirements of Section 309(j) but to honor them. The requirements can be reasonably implemented by opening up a portion of the spectrum for open bidding, maintaining closed bidding for a portion of the C block spectrum and for the F block licenses.

Respectfully Submitted,

AirGate Wireless, L.L.C.


By: ~~J. Jeffrey Craven~~
Janet Fitzpatrick Moran
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-6000

Date: June 22, 2000